

The Bagley-Keene Open Meeting Act of 2004



Presenter: Gregory Lyall
DTSC Senior Attorney

Introduction



- ❧ The Bagley-Keene Act (“Act”) applies to State boards and commissions.
- ❧ Generally requires these bodies to:
 - ❧ Publically notice their meetings;
 - ❧ Prepare agendas;
 - ❧ Accept public testimony; and
 - ❧ Conduct meetings in public, unless otherwise exempted.

Applicability



- ❧ DTSC is not a Board or Commission
- ❧ California Health and Safety Code section 25254 provides in relevant part:
 - ...(d) The panel meetings shall be open to the public and are subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

New GRSP Members



- ❧ The provisions of the Act apply to new members at the time of their appointment, even if they have not started to serve.
- ❧ The Act requires that all new members be given a copy of the Act.

Meetings



❧ Government Code section 11122.5(a) defines a meeting as:

[A]ny congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

❧ Interpreted broadly.

Meetings



- ❧ A meeting occurs any time a quorum of the GRSP's members meet to address issues under its jurisdiction.
- ❧ Includes gatherings during which:
 - ❧ GRSP members debate or vote on issues before them; and
 - ❧ The panel receives information on matters within their jurisdiction.

Serial Meetings



- Serial meetings are expressly prohibited by the Act.
- Often time used to circumvent the development of a concurrence during a meeting.
- A series of communications, each of which involves less than a quorum of GRSP members, but which taken as a whole involves a majority of the GRSP's members.

Teleconference Meetings



- ❧ Permitted by the Act.
- ❧ Teleconference requirements:
 - ❧ At least one member of the state body shall be physically present at the location specified in the notice of the meeting.
 - ❧ Agendas must be posted at all teleconference locations.
 - ❧ Each teleconference location must be accessible to members of the public.
- ❧ Meeting notices and agendas must contain a list of all teleconference locations.
- ❧ Meeting requirements:
 - ❧ All votes taken during a teleconferenced meeting shall be by roll call.
 - ❧ Must provide an opportunity for members of the public to address the state body directly at each teleconference location.

Teleconference Meetings



- ❧ Potential teleconferencing situations:
 - ❧ Teleconferencing from home?
 - ❧ Teleconferencing from car?
 - ❧ Teleconferencing from a remote location?

Notice Requirements



- ❧ The Act requires the GRSP to send notice of its meetings to all people who have requested it at least 10 days before the meeting.
- ❧ The Act also requires the GRSP to post the notice on the internet at least 10 days before the meeting.
- ❧ The notice of meeting must list:
 - ❧ The time and place of the meeting;
 - ❧ The name, phone number and address of a contact person that can answer questions about the agenda and that meeting;
 - ❧ The written notice must also include the address of the internet site where meeting notices will be made available; and
 - ❧ A list of all teleconference locations, if applicable.

Agenda



- ❧ Agendas must contain a *brief* description of the items to be covered.
- ❧ Descriptions should generally not exceed 20 words.
- ❧ Agenda items should provide the public with enough information to allow them to decide whether to attend or to participate in the meeting.
- ❧ Agendas are typically mailed/posted with the meeting notices.
- ❧ The agenda must also list the teleconferencing locations.
- ❧ Agendas must be posted at each teleconference location.

Agenda



- ❧ The agenda controls the topic discussed at the meeting.
- ❧ The agenda can be amended after the 10 day notice was given under 2 circumstances:
 - ❧ If the topic would qualify as an emergency meeting as defined by Gov. Code section 11125.3(a)(1); or
 - ❧ If there is need to take immediate action and the need for that action came after the 10 day notice and agenda period.
 - ❧ Unlikely for GRSP.

Other Meetings



- ❧ The Act recognizes that sometimes boards must act on shorter than 10 days notice.
- ❧ The Legislature created two other forms of meetings that can be held on shorter notice: special meetings and emergency meetings.
- ❧ Special meetings. Address unseen events. Limited purposes (e.g. litigation, legislation, licensing, certain personnel actions etc...)
- ❧ Emergency meetings. Must meet to address a crippling disaster or work stoppage that would severely impair the health and safety of the public.
- ❧ Very unlikely for the GRSP.

Public Participation



- ❧ Public participation is key aspect of the Act.
- ❧ Bodies covered by the Act are generally prohibited from imposing conditions on the attendance at meetings.
- ❧ Members of the public must be permitted to address the body at some point during the meeting.
- ❧ Members of the public are permitted to record and to broadcast the meetings, unless such conduct would constitute a persistent disruption.
- ❧ Closed sessions: In very limited circumstances, a body may meet in closed session to discuss certain matters (e.g. personnel matters, pending litigation, etc...)

Access to Records



- ❧ The public is entitled to access the records of the body.
- ❧ When materials are made available to a majority of the members, either before or during the meeting, they must also be made available to the public without delay.
- ❧ Records must be made available in different formats as required by the ADA.

Accessibility



- ❧ The place and manner of all meetings must be nondiscriminatory.
- ❧ The body cannot discriminate on the basis of race, religion, national origin, etc...
- ❧ The meeting site must also be accessible to the disabled.

Remedies / Penalties



- ❧ Violations of the Act may include:
 - ❧ Overturning the decision of the body;
 - ❧ Injunctions to prevent future violations; and
 - ❧ Awards of attorney's fees and costs.
- ❧ Government Code section 11130.7 provides:

Each member of a state body who attends a meeting of that body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this article, is guilty of a misdemeanor.

Questions



The End

